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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO LICEA,

Defendant and Appellant.

2d Crim. No. B184387  
(Super. Ct. No. 1151831)  
(Santa Barbara County)

Fernando Licea appeals a judgment after pleading no contest to possession of methamphetamine for sale. (Health & Saf. Code, § 11378.) Licea filed a motion to unseal a search warrant affidavit containing information from a confidential informant, to quash the warrant and traverse the affidavit. After an in camera review the trial court found there was probable cause for the issuance of the search warrant and portions of the affidavit had to remain sealed. After reviewing the record of the in camera proceeding we conclude that the trial court did not err either in its rulings on Licea's motions or in its order sealing the affidavit. (*People v. Hobbs* (1994) 7 Cal.4th 948, 976.) We affirm.

FACTS

Police Officer Alfredo Ruiz conducted a search of Licea's home pursuant to a search warrant. In the garage police found 50 "packaged quantities" of

methamphetamine." Ruiz testified that these packages are commonly used by "persons involved in the [sale] of narcotics."

In Licea's car the police seized a "digital scale" containing "methamphetamine residue." Inside a tool box in a shed police found a "baggy containing . . . seven grams of crystal methamphetamine."

The affidavit in support of the search warrant was sealed. Licea filed a motion to unseal it, to quash the search warrant and traverse the affidavit. He claimed: "1) the sealing of the entire search warrant affidavit denies defendant his right to challenge . . . the search warrant, 2) the . . . warrant was not issued upon sufficient probable cause, and 3) the . . . affidavit contains intentional or reckless misstatements of fact."

The prosecutor replied that "unsealing of the affidavit . . . will reveal the identity of the informant."

The court conducted an in camera hearing in chambers. Later, in open court, it ruled, 1) "there was probable cause to support the search warrant," 2) the information was "not stale," 3) the "circumstances warranted ordering the search warrant to be sealed," but 4) the defense was entitled to have a redacted version of it.

## DISCUSSION

Licea asks that we review the in camera proceeding to determine whether: 1) he should have prevailed on his motions, 2) if the redacted portions of search warrant affidavit were properly sealed and 3) if there was probable cause to issue the search warrant.

A trial court must seal "portions of a search warrant affidavit which . . . will reveal or tend to reveal a confidential informant's identity." (*People v. Hobbs, supra*, 7 Cal.4th at p. 963.) If the defendant challenges a warrant issued on sealed information the trial court conducts an in camera review to decide if portions of the affidavit may be disclosed. (*Ibid.*) The defendant is entitled to discover any portions of the sealed materials which "would not reveal or tend to reveal the informant's identity." (*Ibid.*)

We review the affidavit to determine "whether . . .there was 'a fair probability' that contraband or evidence of a crime would be found in the place searched pursuant to the warrant." (*People v. Hobbs, supra*, 7 Cal.4th at p. 975.) In reviewing the in camera record we also decide, among other things, whether "any misrepresentations were made by the affiant in applying for the search warrant." (*Id.*, at p. 977.)

We have reviewed the record of the in camera proceeding. We conclude the trial court properly ordered portions of the affidavit sealed and not disclosed to the defense based on the testimony presented at the in camera hearing. There is nothing in the record to suggest the affiant misrepresented facts. (*People v. Hobbs, supra*, 7 Cal.4th at p. 977.) There was probable cause for the issuance of the search warrant. Disclosure of the sealed portions of the affidavit would likely disclose the identity of the informant. There was no reasonable probability that Licea would have prevailed on his motions. (*Id.*, at p. 974.) The trial court did not err.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

Rick Brown, Judge

Superior Court County of Santa Barbara

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Linda C. Rush, under appointment by the Court of Appeal, for Plaintiff and Respondent.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Robert F. Katz, Supervising Deputy Attorney General, Robert M. Snider, Deputy Attorney General, for Plaintiff and Respondent.